

Summary: Amendments to Chapter 61/A/B – Chapter 394 of the Acts of 2006 (effective March 22, 2007)

“AN ACT RELATIVE TO THE TAXATION OF FOREST, FARM, AND RECREATION LAND” (above linked to Massachusetts General Laws web site)

The amended Chapter 61/61A/61B legislation helps increase protection of open space and supports sustainable forestry and farming by simplifying and making consistent the three Chapter 61 programs. These changes will encourage additional farm and forest land to be enrolled in these programs and protected. The act extends the amount of time municipalities can match a bonifide offer a landowner has from a developer if they should leave the program and standardizes the interest rate applied to the "back taxes" saved while in the program, if a landowner should leave the program. The act also changes the tax assessment method used under the forest chapter to make it consistent with the method used in the agriculture chapter (based on forest and farm economic value instead of a percent of full market value). This is a fairer method as it is based on the actual use of the land. The act removes the payment of a tax by the landowner to the municipality on timber sold, but adds a conveyance tax on land removed from Chapter 61 in the first ten years that will more than make-up for the loss in revenue on this issue. This act also resolves a long-standing dispute on the tax treatment of horse boarding and commercial horseback riding operations which are now included in Chapter 61B. This act had the support of: Massachusetts Municipal Association, Association of Assessing Officers, Farm Bureau, Mass. Forestry Association, Massachusetts Audubon Society, and several other environmental organizations.

In summary, this act authorizes landowners to switch their land from enrollment under one chapter to enrollment under another chapter, without penalty, in order to allow flexibility in land management. Chapters 61 (forest), 61A (agricultural) and 61B (recreational) govern the taxation of non-residential land. "Enrolling in a chapter" means registering one's land with his municipality as suitable for taxation under that chapter's provisions.

Chapter 394 also:

- Allows municipalities the option to tax land currently enrolled in one of the chapters at an open space rate rather than at a commercial rate. This help support agriculture and forestry.
- Sets uniform penalties/repayments for all three chapters when enrolled land is changed to a non-qualifying use (e.g., for development). Requires that, in order to develop a parcel, the landowner must make repayment of the most recent five years of deferred tax with 5% interest or a conveyance tax (as currently required under chapter 61A), but not both. Existing chapter 61A parcels would be grandfathered at 0% interest for withdrawals as was required under the old law. Chapter land that is acquired by a nonprofit conservation organization and developed within five years of this acquisition must make repayment of deferred taxes with 5% interest that would have been due at the time of acquisition.
- Simplifies and makes uniform the calculation of betterment assessments on enrolled land. Also eliminates interest charges when assessments are paid and ensures payments can be apportioned over time once they become due. This resolves issues with water and sewer lines crossing Chapter 61 land.
- Limits "rollback taxes" to changes of use not consistent with any of the chapters. Rollback taxes are penalty taxes assessed when land no longer qualifies for classification under which the land is currently classified. The rollback tax is equal to the difference between the taxes paid under chapter 61 and those that would have been paid under chapter 59 plus simple interest. Rollback taxes will apply to land retained in open space as required for the mitigation of a development.
- Provides that withdrawal from enrollment under any of the three chapters without a change in actual use will not result in a rollback penalty if the use remains unchanged for five years.
- Sets a uniform rate of interest for rollback taxes at 5%. Because current chapter 61A enrollees do not pay any interest on rollback taxes, they will be grandfathered at 0%.
- Adds a conveyance tax to Chapter 61 for new buyers who leave the program and change the land use within the first 10 years of classification or 10 years of an uninterrupted use consistent with

the program under their ownership (which ever is earlier). The conveyance tax is a penalty tax assessed when a land owner sells the land within 10 years of classification. The conveyance tax is based on the sales price of the land and starts at 10% the first year and grades to 1% the 10th year. Currently, a new owner assumes a lien for this tax for 10 years only under Chapter 61A. If land that was classified is acquired by another owner and kept in Chapter use but is sold for development within five years, the new owner must pay the conveyance tax that would have been assessed at the time of acquisition if that transaction were subject to a conveyance tax.

- Requires that Chapter 61 taxes are based on the value of the land as used for forest land as determined by the Farm Land Value Advisory Commission, as now exists under chapter 61A, rather than a percentage of fair market value for development. Adds a representative of DCR to help value forest land on this committee.
- Eliminates the stumpage tax and the Department of Conservation and Recreation (DCR) filing fee for chapter 61 land. The stumpage tax was similar to a sales tax based on 8% of the value of timber sold that is paid to the municipality.
- Eliminates the ability of assessors to reject a forest management plan and instead requires the DCR forester to determine whether the land's management meets silvicultural standards. Silvicultural standards are based on the care and cultivation of forest trees and determined, in this case, by the state forester.
- Permits forest management of land enrolled under chapter 61B with a certified forest management plan approved by the state forester. Currently, the cutting of trees is not allowed under 61B. To actively preserve forests some cultivation is required. This change would allow forest management under the supervision of DCR according to a plan, similar to the one required for classification under chapter 61.
- Allows commercial horseback riding and horse boarding uses to qualify for chapter 61B status.
- Provides uniform set of language for all chapters concerning a municipality's right of first refusal.

The uniform language does the following:

- o Defines what qualifies as a bona fide offer in accordance with recent court decisions.
- o Sets a uniform 12-month right of first refusal period for municipalities after a landowner withdraws land from enrolled tax status.
- o Retains the current 120 day period for a municipality to decide whether to purchase the property under the right of first refusal (or assign such right to a land trust) once they are notified by the landowner of their intent to sell their land for development, but sets 90 day deadline for the municipality to complete the purchase if it elects to buy the property (or assign the right).
- o Sets process by which the value of the land is agreed to using independent appraisals if the landowner intends to develop Chapter land without a sale and allows the landowner to withdraw their intent to leave the Chapter program during this process if the parties cannot agree on the value of the land under the municipalities Right of First Refusal.
- o Requires that a parcel assigned to a land trust cannot have more development than the original proposal that triggered the Right of First Refusal and in all cases at least 70% of the land must be permanently restricted from development.
- o Requires land trusts to pay the conveyance/rollback tax on any portion of the land that is subsequently developed.
- o Gives municipalities the same rights to inspect property that a buyer has in a purchase and sales agreement and in addition allows the municipality to enter the land for the purposes of surveying and inspecting the land, including but not limited to soil testing for the purposes of Title V and the taking of water samples.
- o Creates a process for fairly determining the value of land during a right of first refusal process due to land conversion that occurs without a sale.
- o Updates and clarifies the definition of "forest land" and "forest products" and allows, upon application to the state forester, to include accessory land devoted to other non-timber uses in the certification.